

Dan Graff
LS/5

BEFORE THE
STATE OF WISCONSIN
Division Of Hearings And Appeals



In the Matter of the Revocation of the Well
Drilling and Pump Installing Permits of Ray
Ludwig d/b/a Ludwig Well Drilling, Juneau
County New Lisbon, Wisconsin

Case No. IH-97-06

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND REVOCATION ORDER

Pursuant to due notice, hearing was held on October 27, 1997, at Mauston, Wisconsin, Jeffrey D. Boldt, administrative law judge (the ALJ) presiding.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Mr. Ray Ludwig
N7644 10th Avenue
New Lisbon, WI 53950

The Department of Natural Resources (the DNR or the Department), by

Attorney Dan Graff
101 South Webster
Madison, WI 53707-7921

FINDINGS OF FACT

1. Mr. Ray Ludwig (the respondent) does business as Ludwig Well Drilling and is a well driller registered with the Wisconsin Department of Natural Resources pursuant to sec. 280.15, Stats. His principal place of business is located at N7644 10th Avenue, New Lisbon, Juneau County, Wisconsin.

2. The respondent holds an individual well drilling permit issued by the Department. That permit is No. 0316 and was first issued to the respondent on November 1, 1978.

3. The respondent holds an individual pump installing permit issued by the Department. That permit is No. 0316 and was first issued to the respondent to be effective on January 1, 1978

4 The respondent constructed the wells and/or installed the pumps for the owners named at the locations, and on the dates listed in Exhibit A, attached to and made a part of this Order, in a manner which does not comply with applicable parts of Ch. NR 812, Wis. Admin. Code, as also listed on Exhibit A.

5. The following well constructions listed in Exhibit A did not comply with Ch. NR 812, Wis. Admin. Code.

- a. The respondent constructed at least one well with less than 30 feet of upper enlarged drillhole as required by sec. NR 812.08, Table II Line E. (See violation #10 of Exhibit A.)
- b. The respondent failed to install the minimum amount of casing in at least one well as required by sec. NR 812.12, Table II Line E. (See violation #11 of Exhibit A.)
- c. The respondent either improperly grouted the upper enlarged drillhole or completely failed to grout the upper enlarged drillhole of at least two wells as required by secs. NR 812.12 Table II Line E and NR 812.14(2)(a)2.c. (See violation #'s 7 and 13 of Exhibit A.)
- d. The respondent located at least three wells less than the minimum separation distances from buildings and potential contamination sources as required by secs. NR 812.08(2) and (4) (See violation #'s 2, 16 and 28 of Exhibit A.) In one case the owner's illness may have been due to the improperly located well which tested bacteriologically unsafe.
- e. The respondent failed to collect water samples and provide the owner with the test results on at least two occasions as required by secs. 812.22(6) and (7). (See violation #'s 18 and 26 of Exhibit A.)
- f. The respondent failed to obtain approval from the Department to drill a school well as required by secs. 812.09(4)(b) and (5). (See violation #3 of Exhibit A.)
- g. The respondent failed to submit well construction reports to the Department on at least three occasions as required by sec. NR 812.22(7)(a)(1). (See violation #'s 5, 17 and 25 of Exhibit A.)

- h. The respondent failed to submit well construction reports to the well owner on at least three occasions as required by sec. NR 812.22(7)(a) (See violation #'s 6, 18 and 26 of Exhibit A.)
 - i. The respondent failed to properly install screens on at least one occasion, causing the well to produce sand, in violation of sec. 812.13(1)(e)1 (See violation #8 of Exhibit A.)
 - j. The respondent failed to drive the well casing to a firm seat in the rock on at least one occasion in violation of sec. 812.14(1)(e), causing the well to produce sand. (See violation #12 of Exhibit A.)
 - k. The respondent failed to provide true and accurate information on at least three construction reports, as required by sec. NR 146.08(4). (See violation #'s 15, 20 and 29 of Exhibit A.)
 - l. The respondent failed to provide water sample test results to the Department within 30 days of well completion on at least two occasions, as required by sec. NR 812.22(6). (See violation #'s 14 and 25 of Exhibit A.)
 - m. The respondent terminated the well casing pipe less than 12 inches above the permanent ground grade on at least one well, in violation of sec. NR 812.29. (See violation #19 of Exhibit A.)
 - n. The respondent failed to file a well abandonment report with the Department on at least one occasion, in violation of sec. 812.26(8). (See violation #27 of Exhibit A.)
6. The following pump installations listed in Exhibit A did not comply with Ch. NR 812, Wis. Admin. Code:
- a. The respondent installed a water system where the concentric buried suction line was not pressurized, in violation of sec. NR 812.32(2). (See violation #9 of Exhibit A.)
 - b. The respondent failed to properly seal the upper terminus of a well on at least one occasion, in violation of sec. NR 812.30(2) (See violation #21 of Exhibit A.)
 - c. The respondent failed to seal electrical wires in conduit on at least two occasions, in violation of NR 812.30(5). (See violations #22 and 23 of Exhibit A.)
 - d. The respondent failed to install a proper sampling faucet, in violation of NR 812.34. (See violation #24 of Exhibit A.)

7. The Department was informed of problems with wells installed by respondent under contract for the federal Indian Health Service, particularly with respect to production of sand and concerns about proper abandonment. These concerns reflected well-drilling practices well below industry standards for competence.

8. The Department has repeatedly notified the respondent concerning the above-described violations as specified in items 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 of Exhibit A.

9. During an Enforcement Conference held on August 28, 1995 the Department explained the rules and regulations and the importance of proper and safe well construction techniques. Department staff then supervised and provided technical assistance on ten wells the respondent drilled. These efforts reflected the DNR's willingness to assist the respondent in maintaining his permits.

10. The respondent committed at least six well drilling and three pump installing violations after the enforcement conferences and following receipt of onsite supervision from department staff, as specified in items 22, 23, 24, 25 (two violations), 26 (two violations), 28 and 29 of Exhibit A.

11. The respondent has demonstrated incompetency to act in the industry of well drilling based on the high number of violations of Chs. NR 812 and NR 146, Wis. Admin. Codes, concerning well construction, well location, submittal of inaccurate well construction reports and failure to collect water samples and file reports described in Finding of Fact 5; and due to additional violations committed after code requirements have been explained, as described in Finding of Fact 9.

12. The respondent has demonstrated incompetency to act in the industry of pump installing based on his repeated violations of Ch. NR 812, Wis. Admin. Code, concerning pump installation, as described in Finding of Fact 6.

13. The respondent has willfully violated sec. NR 812.08(2) and (4), Wis. Admin. Code by at least four violations of the same well drilling code sections requiring minimum separation distances from buildings and potential contamination sources as described in Finding of Fact 5.d., and has willfully violated secs. NR 812.22(7)(d) and NR 146.08(4), Wis. Admin. Code at least three times by failing to provide true and accurate well construction reports as described in Finding of Fact 5.k.

DISCUSSION

The DNR proved a number of serious violations which support revocation of both the well driller and pump installer permits issued to Mr. Ludwig. Several of these violations led to drinking water conditions that posed serious health risks to members of the public employing Mr. Ludwig's services. For example, the Dan Good well (violation #28) involved placement of a

well only four feet from a septic tank, and led to the well producing bacteriologically unsafe water. Ludwig's defense in that instance, that he relied on Mr. Good's representations, reflects a serious lack of understanding of his duties as a professional to investigate site conditions and produce wells that meet state standards

Even more troubling was a repeated pattern of filing false well construction reports that included the Good property and two other blatantly erroneous reports. Department regulators provided Mr. Ludwig training and all other manner of assistance, attempting to avoid revocation of his licenses. Instead of improvement, the DNR discovered an alarming pattern of misrepresentations which led the Department regulators to wonder if there were even more violations unknown to DNR staff.

The ALJ accepts at face value Mr. Ludwig's testimony that Karl Walker drilled the Frank Dziewior well (violation #1). It is true that Mr. Walker, who did not testify nor have the opportunity to present his version of events, signed the well construction report on the Dziewior well. (Ex. 17)

The Department proved each and every other allegation by a preponderance of the evidence.

CONCLUSIONS OF LAW

1. Under sec. 280.11, Stats., the Department has general supervision and control of all methods of obtaining groundwater for human consumption, including sanitary conditions surrounding the same and the construction or reconstruction of wells and to prescribe, publish and enforce minimum reasonable standards and rules for the methods to be pursued in the obtaining of drinking water for human consumption. Such rules are contained in Chs. NR 812 and NR 146, Wis. Admin. Codes

2. Under sec. 280.13(2)(b), Stats., the Department has the authority to suspend or revoke any well driller's or pump installer's permit if the Department finds the permit holder has demonstrated incompetency to act in the industry for which the permit was issued. The Department has proven "incompetency to act in the industry" by a preponderance of the evidence.

3. Under sec. 280.13(2)(c), Stats., the Department has the authority to suspend or revoke any well driller's permit if the Department finds the permit holder has willfully violated a second time any provision of Ch. 280, Stats., or any rule, regulation or order prescribed by the Department. The Department has proven that the permit holder has "willfully violated" a provision of Ch. 280, Stats., by a preponderance of the evidence

4. The Department has the authority under secs 280 13(4) and 281.19(2), Stats., to issue this Order.

5. The Order contained herein is reasonable and necessary to accomplish the purposes of Chs 281 and 280, Stats., and Chs NR 812 and NR 146, Wis Admin. Codes

ORDER

IT IS THERFORE ORDERED:

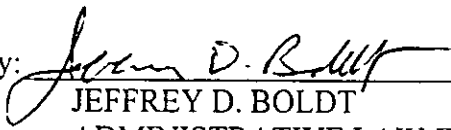
That the respondent's well drilling and pump installing permits be revoked for a period of at least one year;

That should the respondent become employed by another well driller or pump installer during the period of revocation, he must notify the Department within 5 business days to enable the Department to check that adequate supervision is being provided;

That the respondent properly file all outstanding well construction reports and water samples test results with the Department prior to January 23, 1998.

Dated at Madison, Wisconsin on December 3, 1997.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 267-2744

By: 
JEFFREY D. BOLDT
ADMINISTRATIVE LAW JUDGE

ORDERS/LUDWIRAY JDB

NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.

EXHIBIT A
SUMMARY OF LUDWIG WELL DRILLING (WD) AND PUMP INSTALLING (PI) VIOLATIONS

VIOLATION NUMBER & WD OR PI	DATE OF VIOLATION	DNR CONTACT PERSON	WELL OWNER & LOCATION	VIOLATION TYPE	CODE CITATION	DOCUMENTATION	RESOLUTION
1 WD	12-8-8						to g tes no struction well is ed
			Juneau County		E)		
2 WD	10-4-92	Eric Brach	William Gehard SE, SE, S7,T17N, R5E, Town of Quincy, Adams County	Two sand point wells eight inches from building overhang instead of two feet	NR 112.08 (2)(a) (now NR 812.08(2) (a))	Notice of Noncompliance from Brach to Ludwig dated 5-28-93	
3 WD	7-8-93	Bob Schaefer and Eric Brach	7th Day Adventists SW, S36, T14N, R6E, Town of Dell Prairie, Adams County	No approval obtained for school well and no verification of approval	NR 112.09(4) (b) and NR112.09 (5) (now NR 812.09(4) (b) and NR 812.09(5))	Inspection by Eric Brach dated 7-9-93. Notice of violation from Schaefer to Ludwig 8- 31-93	Well abandoned by Ludwig Dec 24, 1993; replacement well installed

5 WD	same	same	same	No well construction report submitted to DNR	NR 112.22(7)(a) 1 (now NR 812.22(7)(a) 1)	Notice of noncompliance from Sandy Hershberger to Ludwig dated Nov. 6, 1996	Letter from Hershberger to Ludwig that report received Mar. 17, 1997
6 WD	same	same	same	No well construction report submitted to well owner	NR 112.22(7)(a)2 (now NR 812.22(7)(a)2)	Same	
7 WD	11-2-93	Fred Bailey	Mike Helbing, NW SE, SE, S3, T15N, R2E, Town of Plymouth, Juneau County	Used chipped bentonite to seal annular space in rock; code requires cement grout	NR 112.08 Table II, line E (now NR 812.12, Table II, line E)	Notice of Noncompliance from Liposcak to Ludwig dated 11-19-93	Liner installed and grouted in by Ludwig Jan. 24, 1994
8 WD	6-9-94	Fred Bailey and Eric Brach	Teri Hancock NE, S18, T21N, R7E, Town of Grant, Portage County	Sand-pumping well due to screen damage during installation	NR 812.13 (1)(e)1.&2.	Field notes, facility contact form documenting telephone conversation with Ludwig about the problem	Second and third screen installed and well cleaned out in October, 1994

9 PI	Before 9-22-94	Eric Brach	Russ Bradbury SE, SE, S31, T18N, R5E, Town of Strong's Prairie, Adams County	Concentric buried suction line not pressurized	NR 812.32(2)	Notice of Noncompliance from Brach to Ludwig dated 9-23-94	
10 WD	6-1-95	Jack Bates	Tony Guldenaar/ Rick Paradise NW, SW, S12, T17N, R4W, Town of Sparta, Monroe County	Upper enlarged drillhole not constructed, though sandstone is encountered above the 30-foot depth.	NR 812.14 (2)(a)2.a. & NR 812.12, Table II, line E	Notice of Violation from Bates to Ludwig dated 5-30-96	Well was replaced by another driller on Apr. 24, 1996
11 WD	same	same	same	25 feet plus 2 inches of casing installed instead of 30 feet required by code	NR 812.12 Table II, line E	same	same
12 WD	same	same	same	Casing not driven to a firm seat, causing well to pump sand	NR 812.14 (1)(e)	same	same
13 WD	same	same	same	No grout in upper enlarged drillhole when neat cement is required	NR 812.12 Table II, line E	same	same

14 WD	same	same	same	Bacteriological water sample collected 10 weeks after well completion rather than within 30 days as required by code	NR 812.22 (6)(a)	same	
15 WD	same	same	same	The information concerning the upper enlarged drillhole, cement grout and total well depth provided on the well construction report was not true and accurate	NR 146.08 (4)	same	
16 WD	3-16-95	Jack Bates	Lonnie and Jackie Schroeder SE, NW, S14, T15N, R1E, Town of Glendale, Monroe County	Well constructed 60 feet from a salvage yard; code requires 250 feet	NR 812.08(4) (f)7.	Notice of Noncompliance from Bates to Ludwig dated 4-25-95	Well was reconstructed by Ludwig in October, 1995
17 WD	October, 1995	same	same	No well construction report submitted to DNR for reconstructed well	NR 812.22 (7)(a)1	Notice of Violation from Bates to Ludwig dated 7-25-96	

18 WD	same	same	same	No well construction report or water sample test results provided to well owner	NR 812.22 (7)(a)2 and NR 812.22 (6)(c)	same	
19 WD	5-7-96	Bill Webber	Robert Jost, SE, NW, S18, T17N, R3E, Town of Clearfield, Juneau County	Replacement well casing height does not meet code minimum (7 instead of 12 inches)	NR 812.29	Notice of Noncompliance to Ludwig from Webber dated 8-5-96	Casing height extended to proper height by Nov. 96 per file notes.
20 WD	same	same	same	Casing height provided on well construction report not true and accurate	NR 146.08(4)	same	
21 PI	Summer, 1995	Fred Bailey	Greg Wanderly NE, NW, S10, T16N, R3E, Town of Lisbon, Juneau County	Top of well sealed with garbage bag (later torn) instead of vermin-proof cap required by code	NR 812.30(1)	Notice of Noncompliance from Bailey to Ludwig dated 8-16-96	Proper well cap and conduit installed by Ludwig before Sept. 18, 1996
22 PI	July 1996	same	same	Electrical wires not sealed in conduit	NR 812.30(5)	same	Same

23 PI	1-10-96	Fred Bailey	Andrew Juhl SW, NW, S34, T17N, R3E, Town of Lisbon, Juneau County	Electrical wires not sealed in conduit	NR 812.30(5)	Notice of Noncompliance from Bailey to Ludwig dated 10-3-96	
24 PI	same	same	same	Upside-down - threaded hose bib instead of turned- down smooth-end sample faucet	NR 812.34	same	
25 WD	same	same	same	Well construction report and water sample test results not provided to department	NR 812.22 (7)(a)1 and NR 812.22 (6)(b)	same	
26 WD	same	same	same	Well construction report and water sample test results not provided to owner	NR 812.22 (7)(a)2 and NR 812.22 (6)(c)	same	
27 WD	After Sept, 1995	Sandy Hershber- ger, Fred Bailey	Gary and Rhonda Woggon, NE, NW, S2, T17N, R2E, Town of Orange, Juneau County	Well abandonment report not filed with DNR [abandoned well installed 6-20-95, owners noticed it began pumping sand in Sept. '95, Ludwig replaced well]	NR 812.26(8)	Letter from Hershberger 5-13-96; Notices of Noncompliance from Hershberger dated 11-6-96 & 12-6-96	Jan. 27, 1997 letter from Hershberger to Ludwig states Ludwig faxed abandonment form Dec. 17, 1996

28 WD	4-8-96	Fred Bailey	Dan Good SW, NW, SE T19N, R3E, Town of Necedah, Juneau County	Well four feet from septic tank, code requires 25 feet; well produced bacteriologically unsafe water in sample collected by Department 12-26-96	NR 812.08 (4)(b)2.	Notice of Violation from Bailey to Ludwig 1-16-97	Ludwig installed replacement well Feb. 10, 1997
29 WD	same	same	same	Well location information provided on well construction report not true and accurate	NR 812.22 (7) and NR 146.08(4)	same	